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Idaho Military Historical Society v. Maslen Appellant's Brief Dckt. 39909

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IN THE SUPREME COURT OF THE STATE OF IDAHO

IDAHO MILITARY HISTORICAL
SOCIETY, INC.,

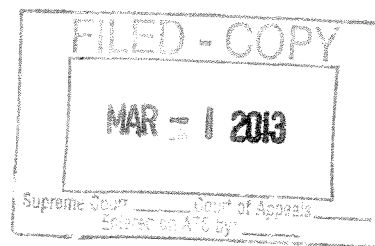
Plaintiff/Counterdefendant/Respondent,

-vs-

HOLBROOK MASLEN, an individual;
AEROPLANES OVER IDAHO, INC., an
Idaho corporation; DOES I-V; and ABC
CORPORATIONS I-V,

Defendants/Counterclaimants/Appellants.

DOCKET NO. 39909-2012



APPELLANTS' BRIEF

Appeal from the District Court of the Third Judicial District for Canyon County
Honorable Juneal C. Kerrick, District Judge presiding.

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I.
STATEMENT OF THE CASE

A. NATURE OF THE CASE

This case concerns three non-profit corporate entities, Plaintiff Idaho Military Historical Society (“IMHS”), the Idaho Aviation Hall of Fame (“IAHOF”), and Aeroplanes Over Idaho (“AOI”). Defendant Holbrook Maslen (“Defendant Maslen”) is the President of AOI. In 2005, IAHOF owned the aircraft at issue, a PT-23 Fairchild. Beginning in February 2006, AOI had agreed to store and maintain the aircraft at its hanger in Caldwell, Idaho. On June 2, 2008, IAHOF donated the aircraft to IMHS.

On August 23, 2008, AOI filed a claim of lien with the FAA on the aircraft. In about March 2009, IMHS demanded AOI surrender possession of the PT-23 Fairchild and AOI refused to do so without compensation for claimed storage and maintenance expenses it incurred on the PT-23 Fairchild.

B. COURSE OF PROCEEDINGS

Plaintiff commenced this action by filing a Complaint for Claim and Delivery, pursuant to Idaho Code Title 8, Chapter 3, on April 16, 2009.¹ On May 19, 2009, the district court entered an Order to Show Cause setting a hearing for June 1, 2009.² At the hearing, Defendants agreed to surrender possession of the aircraft upon Plaintiff’s filing of an undertaking as required by

¹ R. Vol. I, p. 66-67.

² *Id.*

Idaho Code § 8-303.³ Plaintiff refused to post the undertaking and withdrew its application for immediate possession of the aircraft.⁴

On August 6, 2009, IMHS filed its *First Amended Complaint* alleging Claim and Delivery, Slander of Title, and Quiet Title.⁵ Maslen and AOI filed their Answer and AOI filed its Counterclaim and Third Party Complaint against IAHOF on or about August 28, 2009.⁶ In response to the AOI's Third Party Complaint, IAHOF asserted a counterclaim against AOI and cross-claim against Maslen. All claims involving IAHOF were dismissed by stipulation of the parties on January 25, 2011, each side bearing their own attorney's fees and costs.⁷ On November 6, 2009, IMHS filed a Motion for Partial Summary Judgment.⁸ That Motion was denied on December 21, 2009.⁹

Thereafter, on or about May 10, 2010, IMHS filed its *Second Amended Complaint* alleging Claim and Delivery, Slander of Title, Quiet Title, Conversion, Trespass to Chattels, Breach of Fiduciary Duties, and Breach of Contract against Maslen and AOI.¹⁰ On December 8, 2010, Maslen and AOI filed a Motion for Summary Judgment requesting that the causes of action asserted be dismissed.¹¹ In response, IMHS filed its Second Motion for Summary Judgment on December 16, 2010.¹² Both motions were denied on January 25, 2011.¹³

³ *Id.*

⁴ *Id.*

⁵ R. Vol. I, pp. 19-47.

⁶ *Id.*, pp. 92-121.

⁷ *Id.*, pp. 138-39.

⁸ *Id.*, I, p. 2.

⁹ *Id.*

¹⁰ *Id.*, p. 4.

¹¹ *Id.*, p. 6.

¹² *Id.*

Pursuant to the district court's orders denying summary judgment, no claims or counterclaims were dismissed. Tellingly, the district court noted:

Plaintiff does not purport to explain why AOI would not have a claim against Plaintiff for the costs of storing and/or insuring the aircraft from June 2008, the date the Plaintiff allegedly acquired the aircraft, and April 2009, the date Plaintiff allegedly made demand for possession of the aircraft. Even if Plaintiff established that AOI had an agreement with IAHOFF to store the plane for free, there is no basis for the court to conclude that AOI was also bound to provide free storage to Plaintiff after it acquired the aircraft.¹⁴

On each motion, the district court concluded that there were issues of triable fact that could not be resolved on summary judgment.¹⁵

On March 14, 2011, the three day bench trial was set to begin.¹⁶ Pursuant to the denial on the motions for summary judgment, IMHS's claims against Defendants at trial were as follows: (1) claim and delivery for which Plaintiff was seeking return of the aircraft in addition to general money damage in the amount of \$100-\$602,449;¹⁷ (2) quiet title seeking a determination that AOI's lien was invalid;¹⁸ (3) slander of title for which Plaintiff was alleging \$133,769.27 in attorney's fees as damage;¹⁹ (4) conversion for which Plaintiff was alleging \$60,000 in damage;²⁰ and (6) trespass to chattels for which Plaintiff was alleging money damages in the amount of \$100,000-\$602,449 as well a nominal damages.²¹

¹³ *Id.*, p. 8.

¹⁴ R. Vol. I, p. 71 (emphasis added).

¹⁵ R. Vol. I, pp. 65-73; pp. 122-136.

¹⁶ *Id.*, p. 9.

¹⁷ R. Vol. III, pp. 370-76.

¹⁸ *Id.*, pp.369-70.

¹⁹ R. Vol. II, p. 159.

²⁰ R. Vol. III, pp. 379-80.

²¹ *Id.*, pp. 376-79.

On the morning of the first day of trial, the district court heard argument on *Defendants' Motion in Limine* which sought to exclude undisclosed evidence relating to Plaintiff's claim for attorney's fees as damages on Plaintiff's slander of title claim.²² The district court found that the proposed evidence was not timely disclosed, that Plaintiff did not comply with the scheduling order, and that no good cause existed justifying the failure to comply with the scheduling order.²³ Based upon those findings, the district court excluded evidence of Plaintiff's attorney's fees as special damage.²⁴

Thereafter, the trial commenced. Despite the clear ruling from the district court excluding such evidence, Plaintiff continued to attempt to introduce evidence of attorney's fees and costs as damages. For example, Mr. Kenneth Swanson, director of IMHS, testified as to the attorney's fees and costs expended, as well as the pro bono representation it received.²⁵ Mr. Swanson testified that his understanding was that \$96,900 had been expended in attorney's fees.²⁶ In fact, Mr. J. Kahle Becker was called as witness by Plaintiff as attorney for Plaintiff to testify regarding time expended, despite the objection by Defendants.²⁷

After the trial, the district court requested post-trial briefing from each party. Those briefs were submitted April 6, 2011.²⁸ On July 7, 2011, the district court's *Findings of Fact and Conclusions of Law* were issued.²⁹

²² Court Trial Day 1, pp.1-27.

²³ *Id.*

²⁴ *Id.*

²⁵ Court Trial Day 3, pp. 613-19.

²⁶ *Id.*, p. 618.

²⁷ *Id.*, pp. 626-631. Mr. Becker served as one of the Plaintiff's trial counsel.

²⁸ Supp. R., pp. 15-57.

²⁹ R. Vol. III, pp. 339-92.

In its *Findings*, the district court addressed Plaintiff's Claim and Delivery action.³⁰ The district court recognized that Plaintiff "asserts that it is entitled to damages in the amount of **\$100,000 in general damages**, based upon the 'fair market rental value of a PT-23.'"³¹ Plaintiff, however, presented evidence at trial and provided the court a dollar range to consider as far as its claimed money damage: **\$100,000-\$602,449**.³² The district court found that the evidence at trial was uncontroverted that IMHS "had no intention of flying the aircraft, much less renting it out for use by others."³³ Instead, IMHS's intended use of the aircraft was, and apparently still is, as a static museum display piece."³⁴ Thus, Plaintiff failed to prove that the PT-23 Fairchild had value to IMHS during AOI's possession "or what that value was."³⁵ Further, the district court correctly recognized that "[n]either counsel, nor any other expert, testified at trial regarding the calculation of such damages and counsel has never been qualified as an expert on the subject in this action."³⁶ Accordingly, the district court found IMHS "failed to establish any damages resulting from Defendants' wrongful possession of the aircraft."³⁷ Because IMHS failed to prove damages on this claim, Defendants prevailed in part on the Plaintiff's Claim and Delivery cause of action.

Next, the district court addressed the Plaintiff's Quiet Title claim and found that because there was no written contract signed by IAHOE prior to the commencement of work covered by

³⁰ *Id.*, pp. 370-76.

³¹ *Id.*, p. 375 (emphasis added).

³² Supp. R., p. 31.

³³ R. Vol. III, p. 375.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*, p. 376.

the lien, the lien filed by AOI was invalid and IMHS was entitled to judgment quieting title in the PT-23 Fairchild.³⁸

Plaintiff's next claim, slander of title, required proof of "special damages in order to recover" and "when items of special damages are claimed, they must be identified by category."³⁹ Citing to paragraphs 44 and 45 of Plaintiff's *Second Amended Complaint*, the district court found that the evidence adduced is not sufficient to support the slander of title claim.⁴⁰ The district court recognized that attorney's fees can be claimed as damage but reiterated its order excluding untimely disclosed witnesses and evidence.⁴¹ Finally, it was found that the testimony offered at trial was "insufficient to establish the specific amount of fees and expenses incurred" and therefore, the district court found that IMHS failed to establish a right to recover on its claim for slander of title.⁴² Because Plaintiff failed to prove a prima facie element of its slander of title claim, Defendants wholly prevailed on this cause of action.

The district court further addressed Plaintiff's claim of conversion.⁴³ Under this cause of action, Plaintiff was seeking the full value of the PT-23 Fairchild in addition to the return of the aircraft.⁴⁴ The district court stated: "In light of the lack of any evidence of damage to, or diminution in value of, the aircraft, the fact that IMHS was not disposed of the aircraft, and the fact that IMHS has obtained possession of the aircraft, the court concludes that the evidence does

³⁸ *Id.*, pp. 369-70.

³⁹ *Id.*, p. 382.

⁴⁰ *Id.*, pp. 382-83.

⁴¹ *Id.*, pp. 383-86.

⁴² *Id.*, pp. 386-87.

⁴³ *Id.*, pp. 379-80.

⁴⁴ *Id.*

not support a claim for conversion justifying the payment of the full value of the aircraft.”⁴⁵ Again, Plaintiff failed to prove a prima facie element of the claim of conversion. Therefore, Defendants wholly prevailed on this claim.

As to Plaintiff’s Trespass to Chattels claim, Plaintiff sought the same rental damages as above in addition to ‘nominal’ damages.⁴⁶ The district court concluded that while a “plaintiff may recover for the diminished value of chattel or one’s interest in its possession and use,” IMHS failed to provide any evidence that it was in actual possession of the aircraft at any time.⁴⁷ In other words, Plaintiff had failed to present any evidence of the prima facie element of possession and thus did not prove its trespass to chattels cause of action. Moreover, the district court correctly concluded “IMHS has failed to establish that it suffered any damage from Defendants’ trespass to the aircraft.”⁴⁸ As such, Defendants prevailed on Plaintiff’s trespass to chattels claim as well.

The district court also analyzed AOI’s counterclaim for lien foreclosure and unjust enrichment.⁴⁹ The court concluded that AOI failed to prove its counterclaims.⁵⁰ It must be noted that the only counterclaimant was AOI as Defendant Maslen did not bring a counterclaim.⁵¹

Thus, at the end of the trial, Plaintiff was awarded possession of the aircraft, but **\$0** in damages. In all, Defendants successfully avoided nearly **\$800,000** in claimed liability.

⁴⁵ *Id.*

⁴⁶ Supp. R., pp. 26-7.

⁴⁷ R. Vol. III, p. 379.

⁴⁸ *Id.*

⁴⁹ *Id.*, pp. 387-89.

⁵⁰ *Id.*

⁵¹ R. Vol. I, pp. 92-121.

Plaintiff filed a *Motion to Amend Finding of Court* on July 13, 2011.⁵² Specifically, Plaintiff argued that Defendants should be liable for nominal damages as well as certain out of pocket expenses.⁵³ Telling, Plaintiff argued that Defendants “claim[] victory on nearly every count due to the practical impossibility of calculating damages with mathematical certainty for a non-profit museum with pro bono representation.”⁵⁴ Plaintiff’s *Motion to Amend Findings of the Court* was denied on August 9, 2011.⁵⁵

On March 29, 2011, Plaintiff filed its *Memorandum of Attorney’s Fees and Costs* and Defendants objected on April 12, 2011.⁵⁶ Plaintiff filed its *Supplemental Memorandum of Attorney Fees and Costs* on August 23, 2011 and Defendants filed their *Objection* on September 6, 2011.⁵⁷ The district court issued its *Order on Defendants’ Objection to Plaintiff’s Claimed Costs and Attorney Fees* on December 28, 2011.⁵⁸ The district court found that this case did not involve a commercial transaction and declined to award attorney’s fees pursuant to Idaho Code § 12-120(3).⁵⁹ The district court did find, however, that AOI and Maslen were jointly liable for Plaintiff’s attorney’s fees in the amount of \$73,675.00 pursuant to Idaho Code § 12-121.⁶⁰

Defendants filed their *Motion for Reconsideration* on January 10, 2012, challenging the district court’s finding of frivolousness.⁶¹ The district court entered its *Order on Defendants’*

⁵² R. Vol. III, pp. 392-94.

⁵³ *Id.*, p. 412.

⁵⁴ *Id.*

⁵⁵ *Id.*, pp. 414-19.

⁵⁶ R. Vol. II, pp. 237-317; R. Vol. III, pp. 318-338.

⁵⁷ R. Vol. III, pp. 424-433; R. Vol. IV, pp. 434-553.

⁵⁸ R. Vol. IV, pp. 554-567.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*, pp. 568-576.

Motion for Reconsideration Attorney Fees denying the motion on March 20, 2012 and the present appeal followed.⁶²

C. STATEMENT OF FACTS

AOI is an aeronautical museum started by Defendant Maslen in 2004 which operated out of Caldwell, Idaho.⁶³ Importantly, AOI is a “flying museum.”⁶⁴ In fact, one of AOI’s main purposes is to teach kids and young adults how to fly.⁶⁵ AOI works with students to obtain their private and/or commercial instrument rating.⁶⁶ AOI does not charge its students for this service.⁶⁷

Prior to operating AOI, Defendant Maslen served four years in the Army Airborne Paratroopers.⁶⁸ After being honorably discharged, Defendant Maslen worked for the Los Angeles Police Department for approximately nine years.⁶⁹ Defendant Maslen then worked as a commercial airline pilot for approximately 36 years with United Airlines.⁷⁰ Defendant Maslen holds numerous license ratings with the Federal Aviation Administration and has logged over 25,000 hours of flight.⁷¹

As stated above, this case concerns the storage and maintenance of a World War II era PT-23 aircraft. Initially, Steve Appleton donated the subject PT-23 Fairchild airplane to the

⁶² *Id.*, pp. 604-11.

⁶³ Court Trial Day 3, p. 733.

⁶⁴ *Id.*, p. 734.

⁶⁵ *Id.*, p. 733.

⁶⁶ *Id.*

⁶⁷ *Id.*, p. 734.

⁶⁸ *Id.*, p. 728.

⁶⁹ *Id.*, p. 729.

⁷⁰ *Id.*, p. 730.

⁷¹ *Id.*, p. 731-32.

Idaho Aviation Hall of Fame (“IAHOF”) in about June 2000.⁷² Defendant Maslen was also a member of the IAHOF board for approximately 12 or 13 years.⁷³

While he was on the board of IAHOF, it came to Defendant Maslen’s attention that IAHOF was short on funds and could no longer afford to maintain the PT-23 Fairchild.⁷⁴ In about January 2007, IAHOF and AOI engaged in discussions about creating a ‘working relationship.’⁷⁵ Shortly thereafter, IAHOF board members Mr. John Runft and Ms. Gene Nora Jessen visited AOI’s hanger in Caldwell, Idaho.⁷⁶ While there, Mr. Maslen was told that IAHOF was getting out of the museum business and that AOI would get the aircraft.⁷⁷ In response, Mr. Maslen offered AOI’s hanger to IAHOF.⁷⁸ In furtherance of this working relationship between the museums, AOI would be responsible for maintaining the PT-23 Fairchild which included indoor storage, insurance, secretary, phone, office space, maintaining the annual on the plane, as well as any displays IAHOF wished.⁷⁹

On or about June 2, 2008, however, the IAHOF, without notice to AOI, transferred ownership of the PT-23 Fairchild to another museum, the IMHS.⁸⁰ Neither Defendant AOI or Maslen were informed of this change in position or ownership of the aircraft, at that time.⁸¹ This

⁷² Court Trial Day 1, pp. 53-56.

⁷³ Court Trial Day 3, p. 735.

⁷⁴ *Id.*, p. 736.

⁷⁵ *Id.*, p. 738.

⁷⁶ *Id.*, pp. 738-39.

⁷⁷ *Id.*, p. 739.

⁷⁸ *Id.*, pp. 740-41.

⁷⁹ *Id.*, p. 742.

⁸⁰ Court Trial Day 1, pp. 64-65.

⁸¹ Court Trial Day 3, pp. 745.

change in position was contrary to AOI's understanding of the arrangement.⁸² AOI and Defendant Maslen were not informed of this transfer until March 2009 when a letter was sent by Bill Miller of the IMHS demanding possession of the PT-23 Fairchild.⁸³

Thus, for nine months – June 2008 to March 2009 – AOI had unknowingly been storing and maintaining the PT-23 Fairchild for IMHS's benefit rather than for the benefit of IAHO. Throughout the trial it remained uncontested that AOI had no agreement with IMHS to store and maintain the PT-23 Fairchild.⁸⁴ AOI informed IMHS that it would not turn over possession of the aircraft without being compensated.⁸⁵

AOI introduced evidence at trial of other expenses relating to the storage and maintenance of the aircraft. AOI claimed \$150 per month as reasonable storage fees for storing the aircraft indoors.⁸⁶ AOI also claimed costs associated with insurance and to perform annual inspections on the aircraft.⁸⁷ In an effort to secure payment on these expenses, AOI filed a lien on the aircraft with the FAA.⁸⁸ That lien was filed by AOI, not Defendant Maslen, and signed by Chuck Vollman, a representative of AOI.⁸⁹

In April 2009, representatives of IMHS unsuccessfully attempted to forcibly retrieve the aircraft from AOI's hanger, damaging the aircraft in the process.⁹⁰ AOI repaired the damage at

⁸² *Id.*, p. 746.

⁸³ *Id.*, p. 748.

⁸⁴ *Id.*, p. 749.

⁸⁵ *Id.*, p. 750.

⁸⁶ *Id.*, p. 752.

⁸⁷ *Id.*, p. 753; 758.

⁸⁸ *Id.*, p. 754-55.

⁸⁹ *Id.*, p. 754-56.

⁹⁰ *Id.*, pp. 750-51.

its own expense.⁹¹ When IMHS's wrongful attempt to gain possession of the PT-23 Fairchild failed, this lawsuit was instituted.⁹²

II.

ISSUES ON APPEAL

- A. Whether the trial court erred in finding that Plaintiff was the prevailing party in the action.**
- B. Whether the trial court erred in awarding Plaintiff attorney's fees and costs pursuant to Idaho Code § 12-121 and I.R.C.P. 54(e)(1).**

III.

ARGUMENT

A. Standard of Review

A trial court's determination of whether a party prevailed is a matter of discretion.⁹³ "A district court's exercise of discretion will be upheld absent a showing of abuse of discretion."⁹⁴ The boundaries of the district court's discretion are guided by I.R.C.P. 54(d)(1)(B), which provides: "In determining which party to an action is a prevailing party and entitled to costs, the [district] court shall in its sound discretion consider the final judgment or result of the action in relation to the relief sought by the respective parties." To determine whether an abuse of discretion occurred, this Court considers (1) whether the district court correctly perceived the issue as one of discretion; (2) whether the district court acted within the outer boundaries of its

⁹¹ *Id.*, p. 751.

⁹² R. Vol. I, p. 1.

⁹³ *Lettunich v. Lettunich*, 141 Idaho 425, 434-35, 111 P.3d 110, 119-20 (2005).

⁹⁴ *Schneider v. Howe*, 142 Idaho 767, 771, 133 P.3d 1232, 1236 (2006).

discretion and consistently with the applicable legal standards and (3) whether the district court reached its decision by an exercise of reason.⁹⁵

Further, a district court's determination on whether an action was brought or defended frivolously will not be overturned absent an abuse of discretion.⁹⁶ As previously noted, in reviewing the trial court's exercise of discretion, this Court must consider (1) whether the trial court correctly perceived the issue as one of discretion; (2) whether the trial court acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it; and (3) whether the trial court reached its decision by an exercise of reason.⁹⁷

B. The trial court erred in finding that Plaintiff was the prevailing party

In order to be entitled to attorney's fees, Plaintiff must demonstrate that it is in fact the "prevailing party" in the action. Idaho Rule of Civil Procedure 54(d)(1)(B) specifically states that the court "may determine that a party to an action prevailed in part and did not prevail in part...."⁹⁸ If it is found that Defendants prevailed "in part," Idaho Code § 12-120 is necessarily inapplicable because a findings of "prevailing in part" and a finding of "frivolous" are mutually exclusive. In making its determination of prevailing party, the trial court must consider the result

⁹⁵ *Sun Valley Shopping Ctr., Inc. v. Idaho Power Co.*, 119 Idaho 87, 94, 803 P.2d 993, 1000 (1991).

⁹⁶ *Anderson v. Ethington*, 103 Idaho 658, 660, 651 P.2d 923, 925 (1982).

⁹⁷ *Sun Valley Shopping Ctr.*, 119 Idaho at 94, 803 P.2d at 1000.

⁹⁸ I.R.C.P. 54(d)(1)(B).

of the action in relation to the relief sought by the respective parties, whether there were multiple claims or issues, and the extent to which each party prevailed upon each issue or claim.⁹⁹

Further, this Court has held that I.R.C.P. 54(d)(1)(A) is not applicable when there is no prevailing party.¹⁰⁰ Where there are claims, counterclaims and cross claims, the mere fact that a party is successful in asserting or defeating a single claim does not mandate an award of fees to the prevailing party on that claim. The rule does not require that; it mandates an award of fees only to the party who prevailed “in the action.”¹⁰¹

In this case, it cannot be said that Plaintiff prevailed “in the action.” Plaintiff claims that it prevailed by “successfully obtaining possession of the airplane at the close of trial” and on its “quiet title claim.”¹⁰² First, gaining possession of the airplane does not equate to prevailing on a claim. Plaintiff could have obtained possession at the beginning of this trial by simply *posting a bond* – which it refused to do. And as stated above, successfully prevailing on one claim does not equate to prevailing in the action.

Plaintiff brought actions against Defendants for claim and delivery; quiet title, slander of title; conversion; and trespass to chattels. Plaintiff failed to prove all but the quiet title action. Defendants prevailed on four out of five of Plaintiff’s affirmative claims.¹⁰³ The district court found that Defendant AOI failed to prove its two counterclaims. At best, Plaintiff “prevailed” on

⁹⁹ *Chadderdon v. King*, 104 Idaho 406, 411, 659 P.2d 160, 165 (Ct. App. 1983); Idaho Rules of Civil Procedure 54(d)(1)(B).

¹⁰⁰ *International Eng’g Co. v. Daum Indus., Inc.*, 102 Idaho 363, 630 P.2d 155 (1981).

¹⁰¹ *Chenery v. Agri-Lines Corp.*, 106 Idaho 687, 682 P.2d 640 (Ct. App. 1984) (emphasis added).

¹⁰² R. Vol. IV, pp. 434-35.

¹⁰³ Plaintiff also attempted to assert a claim for “unjust enrichment” but the court denied the requested amendment.

three out of the seven claims asserted in this matter. By prevailing on four of the claims, Defendants prevailed on the majority of claims.

Moreover, the only tangible “reward” Plaintiff received out of the lawsuit was possession of the airplane. However, it was never disputed that Plaintiff would ultimately obtain possession of the PT-23 because Defendants did not assert an ownership interest in the aircraft, merely a lien. Stated differently, ultimate possession of the aircraft was never an issue in dispute.

In addition to ultimate possession (which was never in dispute), Plaintiff claimed general damages totaling between \$100,000 and \$602,449.¹⁰⁴ In addition, Plaintiff claimed \$133,769.27¹⁰⁵ in attorney’s fees as damages in this action, as well as \$60,000 for the value of the PT-23 Fairchild for a total of \$796,218.27. The district court, however, found that Plaintiff failed to prove such damages, and awarded Plaintiff **\$0** in damages.

After citing the correct legal standards, the district court summarily found that IMHS was the prevailing party.¹⁰⁶ That decision consisted of a single sentence: “IMHS prevailed on the primary issue in the litigation: whether IMHS was entitled to immediate possession of the aircraft as of the date this action was commenced.”¹⁰⁷ This statement fails to take into account the multiple issues involved in the litigation. First and foremost of those issues are money damages, as analyzed above. Second, the district court’s finding is inconsistent with the multiple claims asserted by Plaintiff which sought much more than just the return of the aircraft. In fact, Plaintiff amended its *Complaint* to include many of those causes of action after it refused to post

¹⁰⁴ Supp. R., p. 31.

¹⁰⁵ R. Vol. II, p. 159.

¹⁰⁶ R. Vol. IV, pp. 560-61.

¹⁰⁷ *Id.*, p. 561.

a bond to take possession of the aircraft. Further, Defendants prevailed on four of those claims. Had the only issue in the litigation been immediate possession of the airplane, there would have been no need for Plaintiff to amend its *Complaint* in the first place.

Based on the foregoing, it is clear that no party prevailed in this action. Because the ‘American Rule’ of attorney fees applies and no party prevailed, the district court abused its discretion in awarding Plaintiff attorney’s fees and costs pursuant to Idaho Code § 12-121.

C. The trial court erred in finding that Defendants defended the claim frivolously

Even if this Court upholds the determination that Plaintiff was a prevailing party, there is no basis to award attorney’s fees and costs because it cannot be said that the case was litigated or defended ‘frivolously.’

In Idaho, we adhere to the ‘American Rule’ which requires that the parties bear their own fees absent statutory authorization or a contractual right.¹⁰⁸ The Idaho Rules of Civil Procedure entitle the prevailing party in a civil action to receive costs and attorney fees only when those fees are provided for by statute or contract.¹⁰⁹

Idaho Rule of Civil Procedure 54(e)(1) does not create an independent right to attorney’s fees, but merely establishes a framework for applying Idaho Code § 12-121.¹¹⁰ In order to be awarded attorney’s fees, it must be found that the case was brought, pursued or defended frivolously, unreasonably, or without foundation.¹¹¹ When deciding whether the case was

¹⁰⁸ *Great Plains Equipment, Inc. v. Northwest Pipeline Corp.*, 132 Idaho 754, 979 P.2d 627 (1999) (citing *Idaho Dept. of Law Enforcement v. Kluss*, 125 Idaho 682, 684, 873 P.2d 1336, 1338 (1994)).

¹⁰⁹ Idaho Rules of Civil Procedure 54(d)(1)(A); Idaho Rules of Civil Procedure 54(e)(1).

¹¹⁰ *Robison v. State Dep’t of Health & Welfare*, 107 Idaho 1055, 695 P.2d 440 (Ct. App. 1985).

¹¹¹ *Needs v. Idaho State Dep’t of Cor.*, 115 Idaho 399, 766 P.2d 1280 (Ct. App. 1988) (emphasis added).

brought or defended frivolously, unreasonably, or without foundation, the entire course of the litigation must be taken into account.¹¹² Thus, if there is a legitimate, triable issue of fact, attorney fees may not be awarded under Idaho Code § 12-121 even though the losing party has asserted factual or legal claims that are frivolous, unreasonable, or without foundation.¹¹³ Stated differently, if a position asserted is “fairly debatable,” a finding of frivolous cannot be had.¹¹⁴ “When a party pursues an action which contains fairly debatable issues, the action is not considered to be frivolous and without foundation.”¹¹⁵

Again, it is well established that where there are multiple claims and multiple defenses, it is not appropriate to segregate those claims and defenses to determine which were or were not frivolously defended or pursued. The **entire** defense must be unreasonable or frivolous.¹¹⁶ Thus, in order for the district court’s decision to be upheld, it must be shown that there was not a single triable issue presented at trial. Moreover, if it is concluded that Defendants prevailed on any triable issue, attorney’s fees cannot be awarded pursuant to Idaho Code § 12-121.

1. Because Defendants actually prevailed on multiple issues and claims, it cannot be said the entire action was defended frivolously, unreasonably, or without foundation

The fact that Defendants were unquestionably successful on multiple issues and claims presented at trial prevents a finding that the action was defended frivolously. Significantly, Defendants successfully defended against a claim of literally hundreds of thousands of dollars.

¹¹² *Nampa & Meridian Irr. Dist. v. Washington Federal Sav.*, 135 Idaho 518, 20 P.3d 702 (2001) (citation omitted).

¹¹³ *Id.*

¹¹⁴ *Associates Northwest, Inc. v. Beets*, 112 Idaho 603, 733 P.2d 824 (Ct. App. 1987).

¹¹⁵ *Sun Valley Hot Springs Ranch, Inc. v. Kelsey*, 131 Idaho 657, 663-64, 962 P.2d 1041, 1047-48 (1998) (citing *Lowery v. Board of County Comm’rs*, 115 Idaho 64, 764 P.2d 431 (Ct. App. 1988)).

¹¹⁶ *Management Catalysts v. Turbo W. Corpac, Inc.*, 119 Idaho 626, 809 P.2d 487 (1991).

“Avoiding liability is a significant benefit to a defendant.”¹¹⁷ “In litigation, avoiding liability is as good for a defendant as winning a money judgment is for a plaintiff.”¹¹⁸

The first victory for Defendants in regard to the issue of money damages was Defendants’ successful *Motion in Limine*. That motion was filed in response to the *Bench Memo Re: Plaintiff’s Entitlement to Attorney Fees and Costs as Damages for Slander of Title*.¹¹⁹ In that *Memorandum*, Plaintiff stated: “Plaintiff will present evidence that its attorney fees and costs through trial and possible appeal total **\$133,769.27**.”¹²⁰ Thus, by all accounts, Plaintiff was anticipating adducing evidence at trial that it was entitled to this amount as special damages.

Defendants objected via the *Motion in Limine* claiming that despite specific requests the evidence was not timely disclosed in discovery.¹²¹ The district court agreed with Defendants and found that the proposed evidence was not timely disclosed, that Plaintiff did not comply with the scheduling order, and that no good cause existed justifying the failure to comply with the scheduling order and excluded such evidence.¹²² This ruling prevented Plaintiff from claiming any right to recover those attorney’s fees as “special damages.” This victory alone renders the trial court’s decision to grant Plaintiff attorney’s fees an abuse of discretion.

In addition to the return of the aircraft, Plaintiff sought the full value of the PT-23 Fairchild at trial.¹²³ Plaintiff put on evidence at trial that the PT-23 Fairchild was valued at

¹¹⁷ *Eighteen Mile Ranch, LLC v. Nord Excavating & Paving, Inc.*, 141 Idaho 716, 719, 117 P.3d 130, 133 (2005).

¹¹⁸ *Id.*

¹¹⁹ R. Vol. II, pp. 164-67.

¹²⁰ *Id.*, p. 166 (emphasis added).

¹²¹ *Id.*, pp. 168-219.

¹²² *Id.*

¹²³ *Id.*

\$60,000.¹²⁴ The district court stated: “In light of the lack of any evidence of damage to, or diminution in value of, the aircraft, the fact that IMHS was not disposed of the aircraft, and the fact that IMHS has obtained possession of the aircraft, the court concludes that the evidence does not support a claim for conversion justifying the payment of the full value of the aircraft.”¹²⁵ Again, Defendants’ victory on this claim prevents a finding of frivolousness.

Plaintiff also claimed lost rental value of the PT-23. Specifically, Plaintiff argued “[e]ven assuming the lowball rental rate of \$25 per hour proposed by Mr. Maslen, IMHS would be entitled to **\$602,449** in damages.”¹²⁶ The district court found that the evidence at trial was uncontroverted that IMHS “had no intention of flying the aircraft, much less renting it out for use by others.”¹²⁷ Because Defendants successfully avoided this claimed liability, it plainly cannot be said that the total defense of the matter was frivolous.

Based on the above, Defendants avoided nearly **\$800,000** in claimed liability that was in addition to the return of the aircraft. Because Defendants unquestionably prevailed on the issue of money damages and avoided hundreds of thousands of dollars in potential liability, the entire defense simply cannot be deemed frivolous.

On the issue of money damages, this case is akin to *Turner v. Willis*, 119 Idaho 1023, 812 P.2d 737 (1991). That case involved a defendant who rear-ended plaintiff in her automobile.¹²⁸ The defendant denied liability until the commencement of trial and then “defended solely on the

¹²⁴ Court Trial Day 1, pp. 65-66.

¹²⁵ *Id.*

¹²⁶ Supp. R., p. 31.

¹²⁷ R. Vol. III, p. 375.

¹²⁸ *Turner v. Willis*, 119 Idaho 1023, 812 P.2d 737 (1991).

basis that the plaintiff's damages were not as severe as plaintiff claimed.”¹²⁹ At the conclusion of trial, the court recognized “there was a genuine issue concerning the amount of damages for the type of injury sustained by the plaintiff” yet awarded plaintiff attorney's fees in the sum of \$30,500.¹³⁰ This Court reversed finding that attorney's fees were not awardable pursuant to Idaho Code § 12-121 because there was “a legitimate, triable issue over the amount of damages.”¹³¹ Thus, in order to avert a claim for attorney's fees under Idaho Code § 12-121, a defendant need not prevail on the issue of money damages, but merely present a legitimate triable issue. Again, in this case, Defendants clearly did more than present a triable issue on money damages. Defendants wholly prevailed on the issue of money damages and avoided hundreds of thousands of dollars in potential liability. Thus, the district court abused its discretion in awarding Plaintiff attorney's fees and costs pursuant to Idaho Code § 12-121.

In addition to the claim of damages, Defendants prevailed on Plaintiff's Slander of Title claim. In the *Second Amended Complaint*, Plaintiff alleged that “the FAA will not provide the documentation which would enable Plaintiff and Third-Party Defendant to operate said airplane as long as Defendants' false ‘liens’ continue to slander and cloud the title of said airplane.”¹³² Plaintiff further alleged that it suffered and will continue to suffer damage and that it is “entitled to an award of damages in an amount to be proven at trial.”¹³³ On this claim, the district court found “[t]he evidence adduced is not sufficient to establish that Defendants' lien caused the FAA

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*, p. 1025.

¹³² R. Vol. I, pp. 80-81.

¹³³ *Id.*, p. 81.

to delay providing documentation enabling IMHS to operate the aircraft. In addition, as noted previously, IMHS's evidence made it clear that IMHS had no intention of operating the aircraft. Instead, IMHS sought to statically display the aircraft. Therefore, IMHS has not proved any special damage, in the form of IMHS's inability to obtain documentation to operate the aircraft, resulting from AOI's Claim of Lien."¹³⁴

Further, Defendants prevailed on Plaintiff's claim of Conversion. In the *Second Amended Complaint*, Plaintiff alleged that "Defendants' flying of the subject airplane has damaged and endangered the subject airplane."¹³⁵ Plaintiff further alleged that such flying caused it "damages in an amount to be proven at trial."¹³⁶ Again, the district court found a lack of evidence as to damage or diminution in value of the aircraft and thus denied Plaintiff's claim for conversion.¹³⁷

Plaintiff next alleged that "Defendants' interference with Plaintiff and Third Party Defendants' lawful possession of the subject airplane has caused Plaintiff and Third Party Defendant damages in an amount to be proven at trial."¹³⁸ The district court disagreed and found that Plaintiff had utterly failed to produce any evidence on point.¹³⁹

The above analysis makes it clear that Defendants not only presented non-frivolous defenses to Plaintiff's claims and damages, but that the Defendants actually prevailed on a majority of the causes of actions asserted. Moreover, Defendants avoided hundreds of thousands

¹³⁴ R. Vol. III, p. 383.

¹³⁵ R. Vol. I, pp. 83-84.

¹³⁶ *Id.*, p. 84.

¹³⁷ R. Vol. III, p. 380.

¹³⁸ R. Vol. I, p. 84.

¹³⁹ R. Vol. III, p. 375.

of dollars in alleged liability. The district court, therefore, abused its discretion in determining that Defendants were liable for attorney's fees and costs pursuant to Idaho Code § 12-121.

2. Defendants' claims and defenses cannot be characterized as "frivolous"

Although not entirely successful, every defense and issue presented by Defendants was at least "fairly debatable." Even if one or more defenses asserted are found to be frivolous, however, attorney's fees cannot be awarded because it cannot be said that all defenses were frivolous.

In its *Order on Defendants' Objection to Plaintiff's Claimed Costs and Attorney Fees*, the district court stated "Defendants' claims that AOI was entitled to a possessory lien on the aircraft pursuant to Idaho statutory law were frivolous, unreasonable and/or without foundation."¹⁴⁰ That decision was maintained in the Order on Defendants' Motion for Reconsideration Attorney Fees.¹⁴¹ A review of the *Findings of Fact and Conclusions of Law*; *Order on Defendants' Objection to Plaintiff's claimed Costs and Attorneys Fees*; as well as the *Order on Defendants' Motion for Reconsideration of Attorney's Fees* confirm that this is the only issue that the district found to be "frivolous."

In the *Order on Defendants' Motion for Reconsideration of Attorney's Fees*, the district court stated that "Defendants' entire defense (and AOI's counterclaim) was based on the assertion that Plaintiff did not have an immediate right to possession of the aircraft (and that Defendants had such a right) because one or both of the Defendants had a valid possessory lien

¹⁴⁰ R. Vol. IV, pp. 554-67.

¹⁴¹ R. Vol. IV, pp.

on the aircraft.”¹⁴² This finding was made in response to Defendants’ argument that a frivolous finding could not be properly made if there was any legitimate triable issue of fact in the entire litigation.¹⁴³

The finding by the district court that the entire defense and counterclaim was based on the assertion of a lien, however, is erroneous because a review of the record indicates that the entire defense was not predicated on the assertion of the lien. Firstly, the damages allegedly suffered by Plaintiff were at issue regardless of the validity of the lien. Thus, Defendants’ defense to the claim of damages cannot be said to be predicated on AOI’s assertion of a lien. Moreover, the entire counterclaim was not predicated on the assertion of the lien. In fact, AOI’s claim of ‘unjust enrichment’ had nothing to do with, and was not dependent upon, the assertion of a lien. As described in detail below, that counterclaim cannot be characterized as frivolous.

Finally, the district court erred in finding that Defendants (plural) claimed a possessory interest and lien in the aircraft. It is undisputed that the lien was filed solely by AOI.¹⁴⁴ It was signed by Charles Vollman.¹⁴⁵ Holbrook Maslen did not file or sign the lien.¹⁴⁶ The effect of the district court’s ruling is that AOI and Holbrook Maslen are jointly and severally liable for the attorney’s fees. In the *Order on Defendants’ Motion for Reconsideration*, the district court upheld that ruling stating “the Aviation Hall of Fame made an agreement with Maslen, personally, to store the aircraft without compensation” and that “Maslen and AOI were united in

¹⁴² *Id.*, p. 608.

¹⁴³ *Id.*

¹⁴⁴ Court Trial Day 3, pp. 754-55.

¹⁴⁵ *Id.*; R. Vol. III, p. 363.

¹⁴⁶ R. Vol. III, p. 363.

their defense...”¹⁴⁷ First, no justification is given as to why the agreement with the IAHOFF would be a basis to conclude that IMHS was entitled to free storage.¹⁴⁸ Second, the finding that AOI and Maslen were “united” in their defense alone cannot give rise to joint and several liability under Idaho Code § 6-803 as none of the requisite findings were made. Further, there was no assertion or finding that requisite elements of piercing the corporate veil were present in this case.¹⁴⁹ Because the conduct of filing a wrongful lien cannot be attributed under any theory to Mr. Maslen individually, any attorney fee award must be directed solely to AOI.

3. The trial court erred in finding the Counterclaimant AOI pursued its counterclaims frivolously

Implicit in the trial court’s finding that both Defendant Maslen and Defendant AOI are liable for Plaintiff’s attorney’s fees is that Defendant AOI’s counterclaim was brought and pursued frivolously. As argued above, it cannot be said that the counterclaim regarding the lien was frivolous. Even if the district court’s finding of frivolousness of the lien is upheld, it cannot be said that AOI’s counterclaim for unjust enrichment was frivolous.

A prima facie case for unjust enrichment consists of three elements: 1) there was a benefit conferred upon the defendant; 2) appreciation by the defendant of such benefit; and 3) acceptance of the benefit under circumstances that would be inequitable for the defendant to

¹⁴⁷ R. Vol. IV, pp. 609-10.

¹⁴⁸ It remained undisputed that the hanger the PT-23 was stored in was AOI’s hanger, not Mr. Maslen’s. See Court Trial Day 3, pp. 752-53. Further, IAHOFF’s own documents confirm that the “PT-23 was on loan to the museum,” rather than to Mr. Maslen personally. See Court Trial Day 1, pp. 225-26 (emphasis added).

¹⁴⁹ Despite the fact that piercing the corporate veil was not pled by Plaintiff and no evidence was introduced on that point, Plaintiff attempted to argue that theory after the trial had concluded. *Plaintiff’s Post Trial Brief*, pp. 14-23. These findings were not adopted or accepted by the district court.

retain the benefit without payment to the plaintiff for value thereof. Unjust enrichment is the measure of recovery under a contract implied in law.¹⁵⁰

First, it was undisputed at trial that the PT-23 Fairchild benefited from and in fact required indoor storage.¹⁵¹ That is because it has a wooden propeller, an open cockpit and is covered in a canvas skin.¹⁵² AOI provided indoor storage of the PT-23 Fairchild when ownership was transferred to IMHS in June 2008 through the end of trial.¹⁵³ Mr. Maslen's testimony was uncontroverted that a reasonable value of storage at the Caldwell airport would be \$250 per month, although AOI was only claiming \$150 per month.¹⁵⁴ Mr. Maslen also testified that he provided insurance and maintenance on the PT-23, thus conferring a further benefit.¹⁵⁵

Second, AOI presented evidence that IMHS appreciated the benefit of the storage and maintenance. Again, it was undisputed that the PT-23 required indoor storage.¹⁵⁶ It was undisputed that neither AOI nor Defendant Maslen had any agreement with IMHS to store the PT-23 – gratuitously or otherwise.¹⁵⁷ IMHS was aware that AOI was storing the aircraft when it was transferred.¹⁵⁸ Yet, IMHS gained the benefit of that storage beginning in June 2008, when the aircraft was gifted to them. It was further uncontroverted that as of January 28, 2009 – about eight months after the transfer – that IMHS had not made any effort to transport the aircraft from

¹⁵⁰ *Gray v. Tri-Way Const. Services, Inc.*, 147 Idaho 378, 210 P.3d 63 (2009).

¹⁵¹ Court Trial Day 3, p. 552.

¹⁵² *Id.*, p. 553; p. 751.

¹⁵³ *Id.*, pp. 741-43.

¹⁵⁴ *Id.*, p. 752.

¹⁵⁵ *Id.*, pp. 753-56.

¹⁵⁶ *Id.*, p. 553; p. 751.

¹⁵⁷ *Id.*, p. 749.

¹⁵⁸ *Id.*, pp. 530-32.

AOI's hanger.¹⁵⁹ In fact, the hand delivered request to retrieve the aircraft was not delivered to Mr. Maslen until March 23, 2009.¹⁶⁰ Thus, IMHS knowingly had the benefit of the storage for at least nine months.

Finally, AOI presented competent evidence that it would be inequitable to allow IMHS to retain the benefit of the storage and maintenance without paying for it. One of the major disputes in the case initially was whether AOI agreed to store the PT-23 for the IAHOFF gratuitously or whether AOI was to receive the benefit of ownership of the aircraft. The case between IAHOFF and AOI/Maslen resolved short of trial. Regardless, it was undisputed that AOI never had an agreement to store the aircraft, gratuitously or otherwise, for IMHS. Clearly IMHS knowingly benefited from the storage and maintenance provided by AOI. Under these circumstances, AOI properly argued that it would be inequitable for IMHS to knowingly benefit from AOI's efforts.

While AOI did not ultimately prevail on its counterclaim of unjust enrichment, it cannot be said that the counterclaim was frivolous. AOI presented a prima facie case for the claim, supported by competent evidence. A review of the evidence presented confirms that whether Plaintiff was unjustly enriched was at least "fairly debatable." Therefore, the district court erred in concluding that AOI's counterclaim was frivolous and abused its discretion in awarding attorney's fees to IMHS under Idaho Code § 12-121.

¹⁵⁹ *Id.*, p. 535.

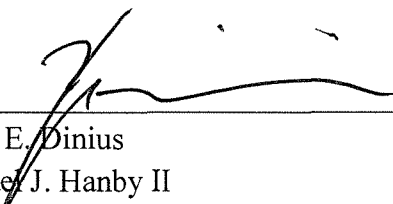
¹⁶⁰ *Id.*, p. 534.

IV. CONCLUSION

In order for the district court's finding that Defendants' defended the action frivolously, unreasonably, and without foundation, it must be shown that there was not a single, legitimate triable issue presented by Defendants at trial. The Defendants, however, did much more than present triable issues at trial because Defendants prevailed on a majority of claims and avoided hundreds of thousands of dollars in potential liability. Further, Defendants presented legitimate issues even on the claims on which they did not prevail. Therefore, the district court abused its discretion in finding that Plaintiff is entitled to attorney's fees pursuant to Idaho Code § 12-121. As such, the determination that Plaintiff is entitled to such fees should be reversed.

DATED this 1st day of March, 2013.

DINIUS LAW

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 1st day of March, 2013, a true and correct copy of the above and foregoing document was served upon the following by:

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